Office of the Comptroller of the Currency
Supporting Statement

Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds

OMB Control No. 1557-0309

A. Justification.

1. Circumstances that make the collection necessary:

Existing Rule

This collection of information was established pursuant to a final rule[1] required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was enacted on July 21, 2010 ("existing rule").[2] The existing rule implemented section 619 of the Dodd-Frank Act, which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board of Governors of the Federal Reserve System (FRB) to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company (BHC) Act (BHC Act) (codified at 12 U.S.C. 1851) that generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions. The OCC's version of the existing rule is codified at 12 CFR part 44. The reporting, recordkeeping, and disclosure requirements associated with the existing rule permit banking entities and the OCC to enforce compliance with section 13 of the BHC Act and the existing rule and to identify, monitor, and limit risks of activities permitted under section 13.

Proposed Rule

The proposed rule contains requirements subject to the PRA and makes changes to some of the existing requirements subject to the PRA. The new and modified requirements as well as existing requirements are described in #2 below.

2. Use of the information:

1 79 FR 5536 (January 31, 2014).

2 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

§ 44.3(c) Presumption of Compliance

Under new § 44.3(c) of the proposed rule, each trading desk operating under the presumption of compliance with the prohibition on proprietary trading would be required to determine on a daily basis the absolute net value of its net realized and unrealized gains or losses on its portfolio of financial instruments based on the carrying fair value of the financial instruments. The sum of the absolute values of gains or losses for each trading date in any 90-calendar-day period is the trading desk's 90-calendar-day absolute profit and loss. If this value exceeds $25 million at any point, the banking entity would be required to notify the appropriate agency that it has exceeded the threshold in accordance with notification policies and procedures.

§ 44.3(e)(3) Liquidity Management Plan

In the existing rule, § 44.3(d)(3) specifies that proprietary trading does not include any purchase or sale of a security by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan. The proposed rule re-designates paragraph (d) as (e) and expands the provision to specify that proprietary trading does not include the purchase or sale of a security, foreign exchange forward, forward exchange swap, or physically-settled cross-currency swap by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan.

§ 44.3(g) Reservation of Authority

Section 44.3(g) is a new provision that would require following notice and response procedures under the reservation of authority provision.

§§ 44.4(a)(8)(iii) and 44.4(b)(6)(iii) Rebuttable Presumption of Compliance

Under the proposed rule, new §§ 44.4(a)(8)(iii) and 44.4(b)(6)(iii) would require that banking entities report to the appropriate agency when a trading desk exceeds or increases its internal risk limits. They also would be required to report any temporary or permanent increase in an internal risk limit. The burden for these reporting requirements is included in the burden estimates for the § 44.20(d) reporting requirements.

§ 44.4(b)(3)(i)(A) Trading Desk Documentation

In the existing rule, § 44.4(b)(3)(i)(A) provides that a trading desk or other organizational unit of another entity with $50 billion or more in trading assets and liabilities is not a client, customer, or counterparty unless the trading desk documents how and why a particular trading desk or other organizational unit of the entity should be treated as a client, customer, or counterparty of the trading desk for purposes of § 44.4(b)(2).

Under the proposed rule, the calculation guidance regarding reporting of transactions with another banking entity with trading assets and liabilities of $50 billion or more would be moved from Appendix A to the reporting instructions. The instructions for the Transaction Volumes quantitative measure would clarify that transactions with another banking entity with trading assets and liabilities of $50 billion or more would be included in one of the four categories of counterparties.

§ 44.5(c) Risk Mitigating Hedging Documentation Requirements

Section 44.5(c) of the existing rule requires enhanced documentation for hedging activity conducted under the risk-mitigating hedging exemption if the hedging is not conducted by the specific trading desk establishing or responsible for the underlying positions, contracts, or other holdings, the risks of which the hedging activity is designed to reduce. It also requires enhanced documentation for hedges established to hedge aggregated positions across two or more desks and hedges established by the specific trading desk establishing or directly responsible for the underlying positions, contracts, or other holdings, the risks of which the hedge is designed to reduce, if the hedge is effected through a financial instrument, technique, or strategy that is not specifically identified in the trading desk's written policies and procedures as a product, instrument, exposure, technique, or strategy that the trading desk may use for hedging. This documentation requirement does not apply to hedging activity conducted by a trading desk in connection with the market making-related activities of that desk or by a trading desk that conducts hedging activities related to the other permissible trading activities of that desk so long as the hedging activity is conducted in accordance with the compliance program for that trading desk. For banking entities that have significant trading assets and liabilities, the proposed rule would retain the enhanced documentation requirements for the hedging transactions identified in § 44.5(c)(1) to permit evaluation of the activity.

In addition, under the proposed rule, new paragraph (c)(4) would eliminate the enhanced documentation requirement for hedging activities that meet certain conditions. Compliance with the enhanced documentation requirement would not apply to purchases and sales of financial instruments for hedging activities that are identified on a written list of financial instruments pre-approved by the banking entity that are commonly used by the trading desk for the specific types of hedging activity for which the financial instrument is being purchased or sold.

§ 44.11(a)(2) Covered Funds: Written Plan for Offering Advisory Services

Under the existing rule, § 44.11(a)(2) requires that covered funds generally must be organized and offered only in connection with the provision of bona fide trust, fiduciary, investment advisory, or commodity trading advisory services and only to persons that are customers of such services of the banking entity or an affiliate, pursuant to a written plan or similar documentation outlining how the banking entity or such affiliate intends to provide advisory or similar services to its customers through organizing and offering the covered fund.

There are no changes to the information collection requirements in this provision under the proposed rule.

§ 44.11(a)(8)(i) Disclosures to Investors

Under the existing rule, § 44.11(a)(8)(i) requires that a banking entity clearly and conspicuously disclose in writing to any prospective and actual investor in the covered fund: (i) that any losses in such covered fund will be borne solely by investors in the covered fund and not by the banking entity or its affiliates; therefore, the banking entity's losses in such covered fund will be limited to losses attributable to the ownership interests in the covered fund held by the banking entity and any affiliate in its capacity as investor in the covered fund or as beneficiary of a restricted profit interest held by the banking entity or any affiliate; (ii) that such investor should read the fund offering documents before investing in the covered fund; (iii) that the ownership interests in the covered fund are not insured by the FDIC and are not deposits, obligations of, or endorsed or guaranteed in any way, by any banking entity; and (iv) the role of the banking entity and its affiliates and employees in sponsoring or providing any services to the covered fund.

There are no changes to the information collection requirements in this provision under the proposed rule.

§ 44.12(e) Extension of Time to Divest an Ownership Interest

In the existing rule, § 44.12(e) states that, upon application by a banking entity, the FRB may extend the period of time to meet the requirements on ownership limitations under § 44.12(a)(2)(i) for up to 2 additional years, if the FRB finds that an extension would be consistent with safety and soundness and not detrimental to the public interest. An application for extension must: (i) be submitted to the FRB at least 90 days prior to the expiration of the applicable time period; (ii) provide the reasons for application including information that addresses the factors in § 44.12(e)(2); and (iii) explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in § 44.12(a)(2).

There are no changes to the information collection requirements in this provision under the proposed rule.

§ 44.20(b) Compliance Program

Under the existing rule, a banking entity with total consolidated assets of $10 billion or less as measured on December 31 of the previous two years that engages in covered activities or investments pursuant to subpart B or subpart C may satisfy the compliance program

requirements by including in its existing compliance policies and procedures references to the requirements of section 13 of the BHC Act and subpart D of the implementing regulations and adjustments as appropriate given the activities, size, scope and complexity of the banking entity.

Under the proposed rule, banking entities with significant trading assets and liabilities would be subject to the six-pillar compliance program requirement,[3] the metrics reporting requirements,[4] the covered fund documentation requirements,[5] and the CEO attestation requirement.[6] Banking entities with moderate trading assets and liabilities would be required to establish the simplified compliance program,[7] and comply with the CEO attestation requirement.[8] Banking entities with limited trading assets and liabilities would be presumed to be in compliance with the proposed rule and would have no obligation to demonstrate compliance with subpart B and subpart C on an ongoing basis. These banking entities would not be required to establish a compliance program unless and until the appropriate Agency, based upon a review of the banking entity's activities, determines that the banking entity must establish the simplified compliance program.

§ 44.20(c) Compliance Program: Additional Standards

Under the existing rule, § 44.20(c) specifies that the compliance program of a banking entity must satisfy the requirements and other standards contained in Appendix B under certain circumstances and contain certain elements. Appendix B set forth standards with respect to the establishment, oversight, maintenance, and enforcement by banking entities of the enhanced compliance program for ensuring and monitoring compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and part 44.

The proposed would remove Appendix B but apply a modified CEO attestation requirement for banking entities other than those with limited trading assets and liabilities. Banking entities with limited trading assets and liabilities would be subject to a rebuttable presumption of compliance. It is not necessary to require a CEO attestation for banking entities with limited trading assets and liabilities as those banking entities would not be required to maintain a compliance program pursuant to § 44.20 under the proposed rule.

§ 44.20(d) Reporting Requirements under Appendix

In the existing rule, § 44.20(d) provides that a banking entity engaged in proprietary trading activity permitted under subpart B of part 44 must comply with the reporting

3 Section 44.20(b) of the existing rule.
4 Section 44.20(d) of the existing rule.
5 Section 44.20(e) of the existing rule.
6 Appendix B of the existing rule.
7 Section 44.20(f)(2) of the existing rule.
8 Appendix B of the existing rule.

requirements described in Appendix A,[9] if: (i) the banking entity, other than a foreign banking entity, has, together with its affiliates and subsidiaries, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the U.S. or any agency) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, equals or exceeds a specified amount; (ii) in the case of a foreign banking entity, the average gross sum of the trading assets and liabilities of the combined U.S. operations of the foreign banking entity (including all subsidiaries, affiliates, branches and agencies of the foreign banking entity operating, located or organized in the U.S. and excluding trading assets and liabilities involving obligations of or guaranteed by the U.S. or any agency) over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, equals or exceeds the established threshold; or (iii) The OCC notifies the banking entity in writing that it must satisfy the reporting requirements contained in Appendix A of part 44.

In addition, a banking entity with $50 billion or more in trading assets and liabilities must report the information required by Appendix A for each calendar month within 30 days of the end of the relevant calendar month; beginning with information for the month of January 2015, such information must be reported within 10 days of the end of that calendar month.

The OCC also may notify a banking entity in writing that it must report on a different basis. Any other banking entity subject to Appendix A shall report the information required by Appendix A for each calendar quarter within 30 days of the end of that calendar quarter unless the OCC notifies the banking entity in writing that it must report on a different basis.

Under the proposed rule, § 44.20(d) provides that banking entities with significant trading assets and liabilities must comply with the reporting requirements described in the Appendix.[10] Unless the Agency notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities would report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix would report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the Agency notifies the banking entity in writing that it must report on a different basis.

§ 44.20(d) Recordkeeping Requirements under Appendix

Under the existing rule, § 44.20(d) provides that a banking entity engaged in certain proprietary trading activity must, for any quantitative measurement furnished to the OCC pursuant to § 44.20(d) and Appendix A, create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the

9 Appendix A requires banking entities to furnish certain quantitative measurements for each trading desk of the banking entity.

10 Under the proposed rule, Appendices A and B are removed and a new Appendix is added.

OCC to verify the accuracy of such reports, for a period of 5 years from the end of the calendar year for which the measurement was taken.

Under the proposed rule, § 44.20(d) provides that certain banking entities engaged in certain proprietary trading activities must comply with the reporting requirements described in the Appendix. A banking entity must also, for any quantitative measurement furnished to the appropriate agency pursuant to § 44.20(d) and the Appendix, create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the appropriate agency to verify the accuracy of such reports, for a period of 5 years from the end of the calendar year for which the measurement was taken. The specific metrics and reporting requirements have been modified to make them less burdensome and more consistent with existing risk management metrics that are already tracked and managed by these banking entities.

§ 44.20(e) Covered Funds: Additional Documentation

Under the existing rule, § 44.20(e) specifies additional documentation required for covered funds. Any banking entity that has more than $10 billion in total consolidated assets as reported on December 31 of the previous two calendar years shall maintain records that include: (i) documentation of the exclusions or exemptions relied on by each fund in determining that such fund is not a covered fund; (ii) for each fund sponsored by the banking entity for which the banking entity relies on one or more of the exclusions from the definition of covered fund, documentation supporting the banking entity's determination that the fund is not a covered fund pursuant to one or more of those exclusions; (iii) for each seeding vehicle that will become a registered investment company or SEC-regulated business development company, a written plan containing documentation of determinations, period of operation, and the plan to market the vehicle; and (iv) for any banking entity controlled by a banking entity located in or organized under the laws of the U.S. or of any State, if the aggregate amount of ownership interests in foreign public funds owned by such entity exceeds $50 million over a certain period, documentation of the value of the ownership interests owned by the banking entity in each foreign public fund and jurisdiction in which any such foreign public fund is organized, calculated as of the end of each calendar quarter, which documentation must continue until the banking entity's aggregate amount of ownership interests in foreign public funds is below $50 million for two consecutive calendar quarters.

Under the proposed rule, the covered fund documentation requirements would be applied only to banking entities with significant trading assets and liabilities.

§ 44.20(f)(1) Simplified Program for Less Active Banking Activities

Under the existing rule, § 44.20(f)(1) applies to banking entities with no covered activities. A banking entity that does not engage in activities or investments pursuant to subpart B or subpart C of part 44 (other than trading activities permitted pursuant to § 44.6(a)) may satisfy the requirements of § 44.20 by establishing the required compliance program prior to

becoming engaged in such activities or making such investments (other than trading activities permitted pursuant to § 44.6(a)).

There are no changes to information collection requirements in this provision under the proposed rule.

§ 44.20(f)(2) Compliance Policies and Procedures

Under the existing rule, § 44.20(f)(2) applies to banking entities with modest activities. A banking entity with total consolidated assets of $10 billion or less as reported on December 31 of the previous two calendar years that engages in activities or investments pursuant to subpart B or subpart C of part 44 (other than trading activities permitted under § 44.6(a)) may satisfy the requirements of § 44.20 by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and part 44 and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

Under the proposed rule, certain banking entities may satisfy the requirements of this section by including appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope and complexity of the banking entity in existing compliance policies and procedures.

§ 44.20(g) Rebuttable Presumption of Compliance

Section 44.20(g) would require that banking entities report to the appropriate agency when their internal risk limits have been exceeded. The burden for these reporting requirements is included in the burden for § 44.20(d) reporting requirements.

Record Retention

A banking entity must retain any records required under part 44 for a period that is no less than 5 years in a form that allows it to promptly produce such records to the OCC on request.

3. Consideration of the use of improved information technology:

Respondents may use any information technology that permits review by OCC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden:

Banking entities with total consolidated assets of $10 billion or less are not "banking entities" within the scope of section 13 of the BHCA, if their trading assets and trading liabilities do not exceed 5 percent of their total consolidated assets. Therefore, the proposed rule will not impact any OCC-supervised small entities.

6. Consequences to the Federal Program if the Collection were Conducted Less Frequently:

The disclosure requirements are imposed on a per occurrence/transaction basis. Less frequent disclosures would impair the ability of investors to adequately evaluate the investment potential of each transaction. The recordkeeping requirements to develop liquidity management plans and policies and procedures to monitor compliance with regulatory requirements are one-time burdens, although the OCC expects that banking entities will review their policies and procedures to reflect any changed conditions no less frequently than annually.

7. Special circumstances necessitating collection inconsistent with 5 CFR part 1320:

None. The information collection is conducted in accordance with OMB guidelines in 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

The OCC issued a proposed rule containing the information collection requirements for 60 days of comment.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

The information collected will be kept confidential to the extent permitted by law.

11. Justification for questions of a sensitive nature:

Not applicable. No personally identifiable information is collected.

12. Burden estimate:[11]

	Number of respondents	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Ongoing Compliance				
Reporting Burden				
Section 44.3(c)	1	2	1	2
Section 44.3(g)	1	1	2	2
Section 44.12(e)	1	10	20	200
Section 44.20(d) ($50 billion)	8	12	41	3,936
Section 44.20(d) ($10-$50 billion	2	4	41	328
Total Reporting Burden				4,468
Recordkeeping Burden				
Section 44.3(e)(3)	38	1	1	38
Section 44.4(b)(3)(i)(A)	10	4	2	80
Section 44.5(c)	10	1	80	800
Section 44.11(a)(2)	27	1	10	270
Section 44.20(b)	10	1	265	2,650
Section 44.20(c)	35	1	100	3,500
Section 44.20(d) ($50 billion)	8	1	13	104
Section 44.20(d) ($10-$50 billion)	2	1	10	20
Section 44.20(e)	27	1	200	5,400
Section 44.20(f)(1)	1	1	8	8
Section 44.20(f)(2)	38	1	40	1,520
Total Recordkeeping Burden				14,390
Disclosure Burden				
Section 44.11(a)(8)(i)	27	26	0.1	70
Total Disclosure Burden				70

11 Affiliated entities under a holding company act in concert with one another to take advantage of efficiencies that may exist. The paperwork burden for such entities has been taken by the FRB at the holding company level and OCC burden estimates are only for OCC-supervised institutions that are not under a holding company.

	Number of respondents	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Total Ongoing Compliance				18,928

Cost of Hour Burden: 18,928 x $117[12] = $2,214,576

13. Estimate of annualized costs to respondents (excluding cost of hour burden in Item #12):

	Number of respondents	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Initial Set-up				
Reporting Burden				
Section 44.3(c)	1	1	1	1
Section 44.3(g)	1	1	2	2
Section 44.12(e)	1	1	50	50
Section 44.20(d) ($50 billion)	1	1	125	125
Section 44.20(d) ($10-$50 billion)	1	1	125	125
Total Reporting Burden				303
Recordkeeping Burden				
Section 44.3(e)(3)	1	1	3	3
Section 44.4(b)(3)(i)(A)	1	1	2	2
Section 44.5(c)	1	1	40	40
Section 44.11(a)(2)	1	1	10	10
Section 44.20(b)	1	1	795	795
Section 44.20(c)	1	1	300	300
Section 44.20(d) ($50 billion)	1	1	13	13
Section 44.20(d) ($10-$50 billion)	1	1	10	10
Section 44.20(e)	1	1	200	200
Section 44.20(f)(1)	1	1	8	8

12 To estimate wages we reviewed data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation (2.2 percent), plus an additional 34.2 percent to cover private sector benefits for financial activities.

	Number of respondents	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Section 44.20(f)(2)	1	1	100	100
Total Recordkeeping Burden				1,481
Disclosure Burden				
Section 44.11(a)(8)(i)	1	1	0.1	0
Total Disclosure Burden				0
Total Initial Set-Up				1,784

Cost of Hour Burden: 1,784 x $117[13] = $208,728

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

Prior Burden: 28,016 Hours (Item #12 and #13).
Revised Burden: 20,712 Hours (Item #12 and #13).
Difference: - 7,304 Hours.

16. Information regarding collections whose results are planned to be published for statistical use:

No publication for statistical use is contemplated.

17. Reasons for Not Displaying the expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

13 To estimate wages we reviewed data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation (2.2 percent), plus an additional 34.2 percent to cover private sector benefits for financial activities.

Not applicable.